

Smt. Kushum Devi Vs. State of U.P. and Another

Smt. Kushum Devi Vs. State of U.P. and Another

SooperKanoon Citation : sooperkanoon.com/478879

Court : Allahabad

Decided On : Jul-23-2001

Reported in : 2001(3)AWC2374; [2001(90)FLR1133]; (2001)3UPLBEC2431

Judge : A.K. Yog, J.

Acts : Uttar Pradesh Dependants of Government Servants (Dying-in-harness) Rules, 1974 - Rule 2; [Code of Civil Procedure \(CPC\), 1908](#) - Order XXXIIA, Rule 6

Appeal No. : C.M.W.P. No. 26684 of 2001

Appellant : Smt. Kushum Devi

Respondent : State of U.P. and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Rakesh Kumar Shukla, Adv.

Disposition : Petition allowed

Judgement :

A.K. Yog, J.

1. Heard learned counsel for the petitioner and learned standing counsel representing respondent Nos. 1 and 2.

2. This, writ petition is being heard finally and decided under the Rules of the Court as also agreed by the counsels for the parties.

3. Photo-copies of the certified copies of the papers relating to Original Suit No. 89 of 2000, Smt. Kushum Devi v. Arun Kumar Sen, under Section 13 of Hindu Marriage Act, show that the petitioner, who is daughter of late Bhagwat Prasad, was married to one Arun Kumar Sen and the said marriage has been dissolved by a decree of divorce dated 17.12.2000 under Section 13 of the Hindu Marriage Act. There is nothing on record to show that petitioner has remarried.

4. Father of the petitioner Bhagwat Prasad, employed in the respondent's office at Jhansi, died on 11.11.1999 leaving behind his widow who submitted an application on 18.1.2001 for giving compassionate appointment to her daughter, the present petitioner (Annexure-1 to the writ petition) to the Commissioner and Director, U. P. Industry Department, Kanpur, who forwarded the same to the General Manager for consideration under relevant 'Dying-in-Harness' Rules for appointment. In the said application, wife of the deceased employee, late Bhagwat Prasad aforementioned, requested for giving appointment to her daughter (namely, the petitioner). The petitioner in a representation dated 16.4.2001 submitted that there was no other family member of Bhagwat Prasad except her mother, who was of old age and not able to take up the job ; copy of the application is filed Annexure-4 to the writ petition.

General Manager, vide impugned order dated 9.5.2001 (Annexure-5 to the writ petition), rejected the petitioner's claim for compassionate appointment under the U. P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974 (for short called 'the Rules') and held that under the said definition of the word 'family' under the Rules only 'wife or husband', 'sons' or 'unmarried daughters'/widowed daughters' are covered and since the petitioner was divorced daughter, her claim under the aforesaid Rules was not maintainable.

Rule 2, shows that the definition of word 'family' is inclusive and not exclusive.

Rule 2 (c) of the Rules, 1974, is quoted below :

'(c) 'family' shall include the following relations of the deceased Government servant :

(i) Wife or husband :

(ii) Sons ;

(iii) Unmarried and widowed daughters.'

Petitioner's counsel placed reliance upon the decision in the case of State of U. P. and others v. Rajendra Kumar and others, 1999 (83) FLR 523 (DB). wherein this Court referring to various decisions held that the word 'family' used in Rule 2 (c) is not exhaustive and a 'grandson' who is dependent upon a deceased employee will be covered under aforesaid 'Rule' which is a piece of beneficial legislation and have to be liberally construed.

Paras 5, 11 and 12 of the said judgment in the case of State of U. P. (supra) are quoted for ready reference :

'5. The learned single Judge agreed with this submission and we also agree with the same. The word 'include' connotes that the persons mentioned in Rule 2 (c) are not exhaustive of the meaning of the word family but are only inclusive. This implies that the word 'family' is not limited to the persons mentioned in Rule 2 (c), but more persons can be included in the definition of the word 'family' in certain respects.

11. It may also be mentioned that the modern method of interpretation, as pointed out by Lord Denning In his Book : 'The Discipline of law', is purposive and not literal. The literal method of interpretation as pointed out by Lord Denning is out of vogue everywhere in the world and now the Courts see the intention and not the literal meaning. This view has also been accepted by our Supreme Court in several decisions e.g., in Hindustan Lever Ltd. v. Ashok Vishnu Kale and others. In Administrator, Municipal Corporation v. Dattatray, the Supreme Court observed. 'The mechanical approach to construction is altogether out of step with the modern positive approach. The modern positive approach is to have a purposeful construction that is to effectuate the object and purpose of the Act.'

12. In the present case the respondent was the dependant of his grandfather who died in harness. In our opinion, therefore, the learned single Judge has rightly held that the respondent is entitled to the benefit of the Dying-in-Harness Rules. The said Rules are a piece of beneficial legislation and have to be liberally construed.'

5. Rule 2 (c) of the Rules is only descriptive so as to include 'unmarried and widowed daughters' who may be eligible for seeking compassionate appointment provided they are dependants of the deceased employee.

6. A divorced daughter, if dependent upon her father, cannot be excluded and has to be included within the meaning of the word 'family' since such a 'divorced daughter', if dependent upon her father, has to be treated at par with an unmarried daughter or widowed daughter as all of them continue to be the liability of their father as member of the family of their 'father'.

7. It is to be noted that a widowed daughter, normally continues to receive support and other benefits from the family of her husband. Her relationship with the family of her husband does not automatically come to an end. In contrast, a divorced daughter snaps all her relationship with her husband and his family and loses status of a married woman. There is no logic to exclude a divorced daughter dependent upon her father from the definition of the word 'family' under the Rules.

8. The above view is fortified from the provision contained in Rule 6 of Order XXXIIA. Code of Civil Procedure, wherein expression 'family' is as follows :

6. 'Family', Meaning of.--For the purposes of this order, each of the following shall be treated as constituting a family, namely :

(a)(i)

(ii)

(iii)

(b)

(c) a woman not having a husband or not living together with her husband, and child or children being issue of hers, and any child or children being maintained by her :

In view of the above, the reason given in the impugned order dated 9.5.2001 is vitiated in law and cannot be allowed to stand.

9. The Impugned order is set aside. The concerned authority, namely. General Manager (respondent No. 2) is directed to decide the claim of the petitioner for compassionate appointment in accordance with' law and subject to the observations made above, i.e., in case the petitioner happens to be the dependent upon her deceased father at the time of death and continues to be so for the reason that she has neither remarried nor otherwise employed elsewhere, and family is in distress, her claim have to be considered as 'unmarried daughter', subject however to the condition that she shall give an undertaking to support her widowed mother in case she is offered appointment under the aforesaid Rules. 1974.

10. Subject to the above observations, the petition stands allowed. No order as to costs.